

STATE OF NEW MEXICO
BEFORE THE SECRETARY OF THE ENVIRONMENT

IN THE MATTER OF THE APPLICATION
OF ROPER CONSTRUCTION, INC. FOR
AN AIR QUALITY PERMIT NO. 9295,
ALTO CONCRETE BATCH PLANT

AQB 21-57(P)

**REPLY IN SUPPORT OF MOTION TO DISMISS NSR SOURCE PERMIT
APPLICATION AND CASE NO. AQB 21-57(P) BASED ON INSUFFICIENT
NOTICE, IMPROPER POSTING OF PUBLIC NOTICE, AND INCOMPLETENESS**

The Ranches of Sonterra Property Owners Association (“Sonterra”), Don “Donnie” R. Weems, and Kathleen Weems, by and through undersigned counsel, submit this reply in support of the Motion to Dismiss the NSR Minor Source Application (the “Alto CBP Application”) submitted by Roper Construction, Inc. (“Roper”). Both Roper and the New Mexico Environment Department (“NMED”) have filed responses in opposition to the motion to dismiss. The responses filed by Roper and the NMED mischaracterize the factual background of the notice Roper purportedly provided to the surrounding landowners and the public at large and also misapprehend the legal requirements for providing notice of an application under New Mexico law.

Because neither Roper nor the NMED has provided any cogent factual or legally supportable bases to deny the motion to dismiss, the Hearing Officer should enter a recommendation that NMED Secretary James C. Kenney dismiss the Alto CBP Application.

A. The Alto CBP Application Must be Dismissed Because Roper Failed to Provide Notice of the Application by Certified Mail to All Landowners Entitled to Such Notice

Both Roper and the NMED improperly assert that Roper provided notice, by certified mail, to all landowners within one-half (1/2) mile of the proposed site of the Roper concrete batch plant by solely relying on parcel map information purportedly received from the Lincoln County Assessor’s Office. Roper further incredibly asserts that Sonterra does not have standing to alert

the NMED that the Alto CBP Application does not comport with well-settled law governing the notice requirements applicable to NMED proceedings. As demonstrated below, these arguments are factually inaccurate and legally incorrect.

1. Whether the Weems have Standing to Object is Irrelevant

As an initial matter, Roper mistakenly asserts that Sonterra lacks standing to raise objections to Roper's failure to comply with the regulatory notice requirements. *See* Roper Response at 7. This argument grossly mistakes the concept of standing – which dictates who can bring suit for injuries in court – with the inapposite doctrine that the failure to comply with statutory notice requirements invalidates all subsequent proceedings.¹ An affidavit of Mark Severance, explaining the Weems' relationship with Sonterra, is attached to this Reply as Exhibit 1; and, the undersigned counsel has entered an appearance on behalf of the Weems, making them parties to this proceeding. *See* 20.1.4.300.A(1) NMAC (a person is made a party to an NMED proceeding by filing and serving entry of appearance); see also 20.1.4.200.D(1) NMAC ("Any party may file a motion with the Hearing Clerk."). Accordingly, this issue is properly before the tribunal.

¹ Moreover, Roper has identified an irrelevant standing test which governs when a party may assert the rights of persons absent from the case, such as the general public or other affected third parties. *See* Martinez, 2003-NMCA-043, ¶ 18, 133 N.M. 472 ("Johnson directs us to consider the following three criteria in determining whether Appellants should be granted standing to assert the rights of absent opponents[.]"); see also *New Mexico Right to Choose/NARAL v. Johnson*, 1999-NMSC-005, ¶ 13, 126 N.M. 788 (same). As shown above, this rule has no applicability to the Weems' situation, who have been made parties to this case by virtue of the entry of appearance and thus are not "absent." Moreover, the Weems are not third parties to Sonterra but are members for the purpose of legal opposition to Roper's proposed concrete batch plant, as explained by the affidavit of Mark Severance. *See* Exhibit 1. Thus, analyzing Sonterra or the Weems' standing to raise the identified deficiencies in Roper's application would be a fruitless exercise; the Weems are parties to this proceeding and the effect of Roper's failure to comply with the notice provisions invalidates all subsequent proceedings, irrespective of who brings the deficiency to NMED's attention.

2. Roper was Required to Provide the Weems with Notice by Certified Mail

There is no factual dispute that Mr. and Ms. Weems reside within one-half mile of the facility and did not receive notice from Roper as required by the rule. *See* Roper Response at 3. Roper seeks to cast blame on the county assessor, but does not dispute the essential facts. *See id.* This concession is fatal to the validity of these proceedings, and the application should be dismissed without prejudice so that a valid, lawful proceeding can go forward. *See Baca v. Grisolano*, 1953-NMSC-028, ¶ 22, 57 N.M. 176 (“The fact that he violated the law and failed to carry out its express and mandatory provisions is the essential factor in this case. The cause of this failure is not material—whether it was due to fraud, collusion or honest mistake.”).

The controlling regulation requires Roper to provide the public notice, by certified mail, “to the owners of record, as shown in the *most recent property tax schedule*,” of all properties located within one-half (1/2) mile of the proposed site. 20.2.71.203.B(1)(b) NMAC (emphasis added). Notwithstanding this requirement, Roper, and the NMED for that matter, argue that they are entitled to rely on a parcel map, which does not contain the most recent property tax information as required by the regulation.

The term “property tax schedule” is specifically defined by statute:

A. After receipt of the rate-setting order and the order imposing the tax, but no later than October 1 of each tax year, the county assessor shall prepare a property tax schedule for all property subject to property taxation in the county. This schedule shall be in a form that shall be made available electronically and contain the information required by regulations of the department and shall contain at least the following information:

(1) the description of the property taxed and, if the property is personal property, its location;

- (2) the property owner's name and address and the name and address of any person other than the owner to whom the tax bill is to be sent;
- (3) the classification of the property;
- (4) the value of the property determined for property taxation purposes;
- (5) the tax ratio;
- (6) the taxable value of the property;
- (7) the amount of any exemption allowed and a statement of the net taxable value of the property after deducting the exemption;
- (8) the allocations of net taxable value to the governmental units;
- (9) the tax rate in dollars per thousand of net taxable value for all taxes imposed on the property;
- (10) the amount of taxes due on the described property; and
- (11) the amount of any penalties and interest already imposed and due on the described property.

B. The property tax schedule is a public record and a part of the valuation records.

NMSA 1978, § 7-38-35 (Preparation of property tax schedule by assessor).

The property tax schedule for Lincoln County is easily obtained on the Lincoln County Assessor's website, as required by statute. *See* Exhibit 2, screenshot of website. By entering the property code number from the parcel map, anyone can easily determine who is the current owner of record for a particular parcel under the most recent property tax schedule. *See* Exhibit 3, property tax schedule for the Weems' property. As demonstrated by Exhibit 3, this webpage contains all the information prescribed by Section 7-38-35 and unequivocally identifies the Weems

as the owners. *Id.* Alternatively, any person can obtain the current property tax information for any particular parcel by simply calling the Lincoln County Assessor and providing the parcel number. Indeed, that is how undersigned counsel obtained the information that the Weems were the owners of record for their property. *See* Exhibit 4, screenshot of property tax information.

Roper failed to take the necessary step of determining, from the parcel map, the properties within one-half mile of the site and then obtaining the tax schedules for those properties to determine the current ownership, the information upon which Roper relied, provides only the parcel numbers of the properties and the owners *at the time the parcel map was updated*. In fact, the Lincoln County Assessor’s Online Mapping tool, as identified in Roper’s response, specifically contains a disclaimer that the “data on this website is provided ‘as is’ without warranty of accuracy, timeliness or completeness.” Exhibit 5, disclaimer. Moreover, the map that the NMED points to as support for its assertion that Roper provided adequate notice is not even an accurate parcel map. *See* NMED response, p. 4, citing to attachment 3 of the response. That map is a screenshot from a third-party that creates pictometry software called CONNECTExplorer, which merely utilizes data provided by the United States Geological Survey, contains data that may be as old as five years, and is not intended to provide the most accurate property owner names in any given county. *See* Exhibit 6, Affidavit of L. Dallett. Under these circumstances, there is no doubt that Roper failed to provide notice, by certified mail, “to the owners of record, as shown in the most recent property tax schedule,” as required by regulation. 20.3.72.203.B(1)(b).

3. The Entire Proceeding is Invalid without Proper Notice

Roper has the burden to prove that its application meets “all of the statutory and regulatory requirements[.]” *Picket Ranch, LLC v. Curry*, 2006-NMCA-082, ¶ 56, 140 N.M. 49 (party seeking permit in administrative proceeding has burden to prove compliance with the regulatory requirements); *see also* 20.2.72.203.B (notice requirements). Instead of seeking to carry this

burden, Roper, and NMED, attempt to confuse the issue of Roper's failure to comply with the regulatory notice requirements, by seeking to cast the question as one of fault. Fault, however, is immaterial to whether all proceedings subsequent to the defective notice are lawfully invalid:

It matters not what was the reason or occasion for his failure to carry out and perform the mandatory provisions of the statute before granting the liquor license. The fact that he violated the law and failed to carry out its express and mandatory provisions is the essential factor in this case. The cause of this failure is not material—whether it was due to fraud, collusion or honest mistake

Baca, 1953-NMSC-028, ¶ 22.

New Mexico courts have repeatedly upheld this principle of state administrative law and have found that proceedings which do not comply with the prerequisite notice requirements result in a proceeding which is void *ab initio*. In *Nesbit v. City of Albuquerque*, 1977-NMSC-107, 91 N.M. 455, our Supreme Court held that failure to substantially comply with statutory notice provisions in a zoning proceeding invalidated all subsequent actions of the zoning board. *Id.*, ¶ 3. Contrary to NMED's assertion that Sonterra seeks to import non-applicable rules, our courts have consistently applied this principle across the administrative landscape. In *Martinez v. Maggiore*, 2003-NMCA-043, 133 N.M. 472, the New Mexico Court of Appeals found that failure to comply with notice requirements for a permitting proceeding for a landfill was governed by the *Nesbit* rule. *Id.*, ¶ 13 ("We see close parallels between the two types of proceedings: both involve changes in the use of land which potentially can affect the general public as well as the individual interests of landowners whose properties are located near the subject property.").

The same rule governed the outcome in *Eldorado at Santa Fe, Inc. v. Cook*, 1991-NMCA-117, 113 N.M. 33 (water rights) (abrogated on other grounds in *Storm Ditch v. D'Antonio*, 2011-NMCA-104, 150 N.M. 590). This consistent rule is applied irrespective of whether the party

entitled to notice has actual knowledge of the proceedings, or whether the notice requirement is imposed by statute or regulation:

Thus, to the extent that NENMRL makes due process arguments on appeal in this case—that the interested parties had actual knowledge of the hearing and that individual notice letters were not misleading or prejudicial—we are not persuaded. These actions, even if they were substantiated by the record, would not render harmless the failure of NENMRL to meet regulatory notice requirements. This is consistent with the underlying policy rationale behind *Martinez*—that the failure to comply with statutory and/or regulatory notice requirements is a serious deficiency in the permitting process requiring stark consequences because it effectively precludes the right of interested parties to meaningfully participate in the hearing process and to insure that their concerns regarding proposed permit modifications are heard.

See Northeastern New Mexico Regional Landfill, LLC v. The New Mexico Environment Department and Martinez, et al., Ct. App. No. 28,236 consolidated with 28,229 at 21. For these reasons, Roper’s application must be dismissed because this proceeding cannot result in issuance of a valid permit.²

B. The Notice is Not Conspicuous and Does not Comply with the Notice Requirements

Roper concedes that the notice posted at the proposed site cannot be read by a passerby without pulling onto the shoulder of a 50 MPH highway, exiting the vehicle, and approaching the

² NMED’s assertion that this notice issue should be argued at the public hearing does not comport with well-established standards governing administrative proceedings. Tribunals routinely determine threshold matters of law before a trial on the merits. *See, e.g., Headen v. D’Antonio*, 2011-NMCA-058, ¶ 7, 149 N.M. 667 (appropriate for State Engineer to deny water rights applications after threshold determination of availability). This norm ensures that public resources will not be wasted on moot issues, or on proceedings which will necessarily be repeated. Moreover, allowing the hearing to go forward without proper notice risks unnecessarily prolonging and complicating these proceedings through piecemeal permitting, which NMED has explicitly rejected as a disfavored practice. *See generally, Sanchez v. Board of County Commissioners of Taos County*, No. A-1-CA-37995, 2021 WL 2190429 (N.M. Ct. App. May 24, 2021) (piecemeal fashion of water rights application deprived acequia owners of notice and excused late filing of appeal); *see also Matter of Rates and Charges of US West Communications*, 1993-NMSC-074, 116 N.M. 548 (state corporation commission appropriately suspended proceedings while application was incomplete); *see also Gila Resources Information Project v. New Mexico Water Quality Control Commission*, Nos. S-1-SC-35279, 35289, 35290, 2015 WL 13730538 at *2 (Consolidated Answer Brief of NMED) (Dec. 30, 2015) (outlining harms created by piecemeal permitting in NMED proceedings).

sign by entering onto Roper's property. Response at 5 ("Anyone driving past the site *can pull over and read the notice.*") (emphasis added). This concession requires dismissal of the application for failure to meet NMED's notice requirements – a notice which cannot be read by frequent passersby, traveling directly in front of the proposed facility, is not conspicuous under New Mexico law. *See* Exhibit 7 (Severance Affidavit); *see also Baca*, 1953-NMSC-028 (notice which could not be read by regular passersby did not satisfy requirement of conspicuous notice).

NMED's response does not explain how the New Mexico Supreme Court's analysis in *Baca* is inapplicable to the present case. Rather than present an argument based on authority, NMED simply makes the bare assertion that the "cited statute and caselaw are inapposite." NMED Response at 4. NMED, however, fails to cite any caselaw or regulation in support of its position, on this point or any other. *See In re Adoption of Doe*, 1984-NMSC-024, ¶ 2, 100 N.M. 764 ("We assume where arguments in briefs are unsupported by cited authority, counsel after diligent search, was unable to find any supporting authority."). This failure is unsurprising because the *Baca* case, though interpreting requirements of the Liquor Control Act, presented remarkably similar facts and issues to this proceeding.

In *Baca*, the statute required the applicant to post notice of the application "*conspicuously* on the outside of the front wall or *front entrance* of the immediate premises." *Baca*, 1983-NMSC-028, ¶ 4 (emphases added). In this case, Roper is required to post notice in four "publicly accessible and conspicuous places, including the *proposed* or existing *facility entrance.*" 20.2.72.203.B(4)(a) (emphases added). Just as Roper has not yet constructed the proposed concrete batch plant, the applicant in *Baca* had not yet constructed the building in which he sought to exercise his liquor license. *See id.*, ¶ 15 ("[The applicant] had previously testified that if he got his license the man who owned the lot was supposed to build him a building for the liquor

business[.]”). The *Baca* applicant therefore posted the notice on a signpost, behind a barbed wire fence, making the notice unreadable to regular travelers in the area. *See id.*, ¶¶ 9-12.

In the current circumstances, in order to read Roper’s notice, a person is required to stop his or her vehicle on a 50 MPH rural highway, exit the vehicle, and walk 40 feet under these unsafe conditions. *See* Exhibit 7 (Severance Affidavit); *see also* Report ranks New Mexico #1 in pedestrian fatalities for 2020 available at <https://www.krqe.com/traffic-roads/report-ranks-new-mexico-1-in-pedestrian-fatalities-2020/>. Moreover, unlike in *Baca*, where the applicant did not have a planned building, Roper’s proposed facility has already been planned. According to Roper’s access permit issued by the New Mexico Department of Transportation, the location of the proposed entrance is 244 feet east of the property line of Roper’s property and the adjoining tract (3A) to the west. *See* Exhibit 7 (Severance Affidavit). The posted notice, however, is situated approximately 49 feet east of the centerline of this proposed entrance and 40 feet back from the highway – the notice is thus not posted at the “proposed facility entrance” and cannot be read without the inconvenience and danger of exiting a vehicle on a rural highway.

In attempting to hide the fact that the posted notice is not at the proposed facility entrance, and provides no effective notice to passersby, Roper engages in a non-sensical and disingenuous analysis. Roper claims that the “applicable regulation does not specify the size of the notice...It merely states it must be ‘accessible’ and in a ‘conspicuous place’.” Roper Response at 5. The regulation, in fact, requires notice to be posted at “the proposed facility entrance,” as one of the specific conspicuous places. 20.2.72.203.B(4)(a). Roper has not complied with this requirement, which is designed to provide effective notice to members of the public who regularly pass by the proposed facility. *See Baca*, 1953-NMSC-028, ¶ 16 (“If the notice had been conspicuously posted would not those who frequently passed immediately in front of the property be able to see and read

the notice? If it could not be read, for what purpose should it be posted? It could be read only by people who were willing, with some effort and difficulty, to go back on the property close enough to find out what the notice meant or said.”).

C. Conclusion

Pursuant to 20.1.4.100.E(2)(b) NMAC, the hearing officer is empowered to hear and to rule upon the present motion. The requested relief, however, would result in a final order dismissing the application without prejudice. For this reason, Sonterra requests that the hearing officer enter an order finding that the motion is well-taken for the reasons set forth above, and recommending to the Secretary that the application be dismissed without prejudice. *See* 20.1.4.100.E(2)(c) (power to issue final orders is reserved to the Secretary).

Respectfully submitted,

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Don R. and Kathleen Weems*

CERTIFICATE OF SERVICE

I hereby certify that on December 6, 2021, I caused a true and correct copy of the foregoing pleading to be electronically served on the following:

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kburby@montand.com

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christopherj.vigil@state.nm.us

*Attorney for New Mexico Environment
Department Air Quality Bureau*

/s/ Thomas M. Hnasko

Thomas M. Hnasko

STATE OF NEW MEXICO
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ALTO CONCRETE BATCH PLANT

AQB 21-57(P)

STATE OF NEW MEXICO)
) ss.
COUNTY OF LINCOLN)

AFFIDAVIT OF MARK SEVERANCE

Mark Severance, being first duly sworn, deposes and states as follows:

1. I am over the age of 18 years and am competent to make this affidavit. The matters set forth below are true based on my personal knowledge.

2. I serve on the Ranches of Sonterra Property Owners' Association ("Sonterra") Board of Directors as the Director III – Compliance/Ombudsman. Sonterra is a 501(3) registered non-profit corporation, with 500 property owners as members. In addition to the members of Sonterra, there are hundreds of residents in the surrounding area who are actively opposed to the concrete batch plant proposed by Roper Construction, Inc. ("Roper").

3. In a community meeting with participants from the majority of Alto area neighborhoods, as well as several area business owners, the participants agreed to form a multi-neighborhood/multi-business coalition to provide a consolidated legal objection to the proposed concrete batch plant. This led to the formation of the Alto Coalition for Environmental Preservation (the "AltoCEP"), which by itself is not a legal entity. The participants also agreed that Sonterra would serve as the authorized legal representative for the AltoCEP and engage with legal counsel to represent the legal objections of the participants in the AltoCEP. Concurrently, the Sonterra Board of Directors motioned and voted to create an ad hoc committee to address Sonterra

EXHIBIT 1

resident's concerns regarding the proposed plant, with the AltoCEP serving as a member on this committee. This motion and vote created a formal relationship between the AltoCEP and Sonterra, within the scope of the Sonterra Property Owners Association bylaws. Sonterra is the authorized representative for all participants in the Alto CEP to express their opposition to, and raise legal objections against, the proposed batch plant.

4. All members of the community may become participants in the Alto CEP, regardless of whether they are homeowners within Sonterra, and thereby authorize Sonterra to act on their behalf. This is an efficient means to facilitate full participation by the public; otherwise, every individual who opposes the batch plant would be required to file a separate entry of appearance in the air quality proceeding, which likely would result in hundreds of additional filings.


5. Mr. and Mrs. Weems are participants in the Alto CEP and have authorized Sonterra to act on their behalf. In this regard, Sonterra has full authority to assert that the Weems did not receive the required regulatory notice, as well as to act on behalf of any other participants in the Alto CEP who has particular objections to the air quality permit application.

FURTHER AFFIANT SAYETH NAUGHT.

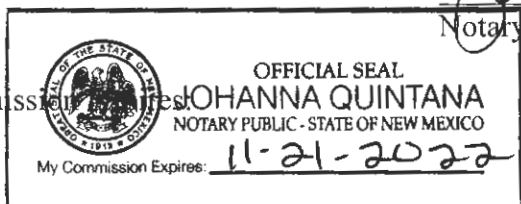

MARK SEVERANCE

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me on this 3rd day of November, 2021, by Mark Severance.

DECEMBER


Notary Public

My Commission Expires:





County Assessor

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In serving the people of Lincoln County, it is the mission and responsibility of the Assessor's office to locate, identify and establish fair market value for all real and personal property within Lincoln County as dictated by state statutes and regulations.



Walter Hill

COUNTY ASSESSOR

575-648-2306 ext. 125

800-687-2705

whill@lincolncountynm.gov

300 Central Avenue

P.O. Box 38

Carrizozo, NM 88301

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Monday-Friday 8am-5pm

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300 Central Avenue

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Carrizozo, NM 88301

BROWSE

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[Property Values and Property Taxes](#)[How to calculate taxes](#)[Property Tax Exemptions](#)[Livestock & Personal Property](#)[2021 Assessors Certification](#)

EXHIBIT 2



Welcome to the County Lookup

Please Select an Option from above To Continue.

Updates and corrections occur on a daily basis; however the County shall not incur

any liability for omissions with respect to the information provided in this data.

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Search by

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Search by

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Property Code

Physical Address

Subdivision

Metes

Click to Print

Owner Information

Owner # 1002481 **District** 280

WEEMS, DONNIE R

KATHLEEN A

PO BOX 563

RUIDOSO NM 88355

Estimated Taxes for Owner

Estimated Tax

Estimated Year used

\$1867.02

2021

Calculate Estimated Tax

Recap Value Information

Central Full Value

0

Full Value

386841

Land Full Value

95220

Taxable Value

128947

Improvements Full value

291621

Exempt Value

0

Personal Property Full Value

0

Net Value

128947

Manufactured Home Full Value

0

Livestock Full Value

0

Property Information

Property Code 4072059339149000000

Book 2020 **Page** 760 **Reception#** 202000760

Physical Address

Bldg Apt

Subdivision LEGACY ESTATES

TRACT 4

CONT'G 2.116 ACS.

Property Value Information

101M Residential Land 0.00 95220

201I Residential Improvements 0.00 291621

11/08/2021 10:58:30 LINCOLN COUNTY ASSESSOR

Year 2021 ASSR26A

1002481 Dist 280

0 Centrl 386841 Full

WEEMS, DONNIE R

FinCo

95220 Land 128947 Txbl

KATHLEEN A

291621 Impr 0 Exmpt

0 P.P.

PO BOX 563

0 M.H. 128947 Net

RUIDOSO

NM 88355

0 Livstk

Print=Y

Property Description

Code ValueDesc Quantity Rate Taxable

4 072 059 339 149 000000

101M HOMESITE 31740

FILE 2020 PG 760 202000760 02/10/20 201I NEW RES I

97207

CABINET-H SLIDE-685

LEGACY ESTATES

TRACT 4

CONT'G 2.116 ACS.

Bottom

F3=Cancel F4=Prompt() F6=Chg Yrs F12=Return

MA

A

MW

08/011

EXHIBIT 4

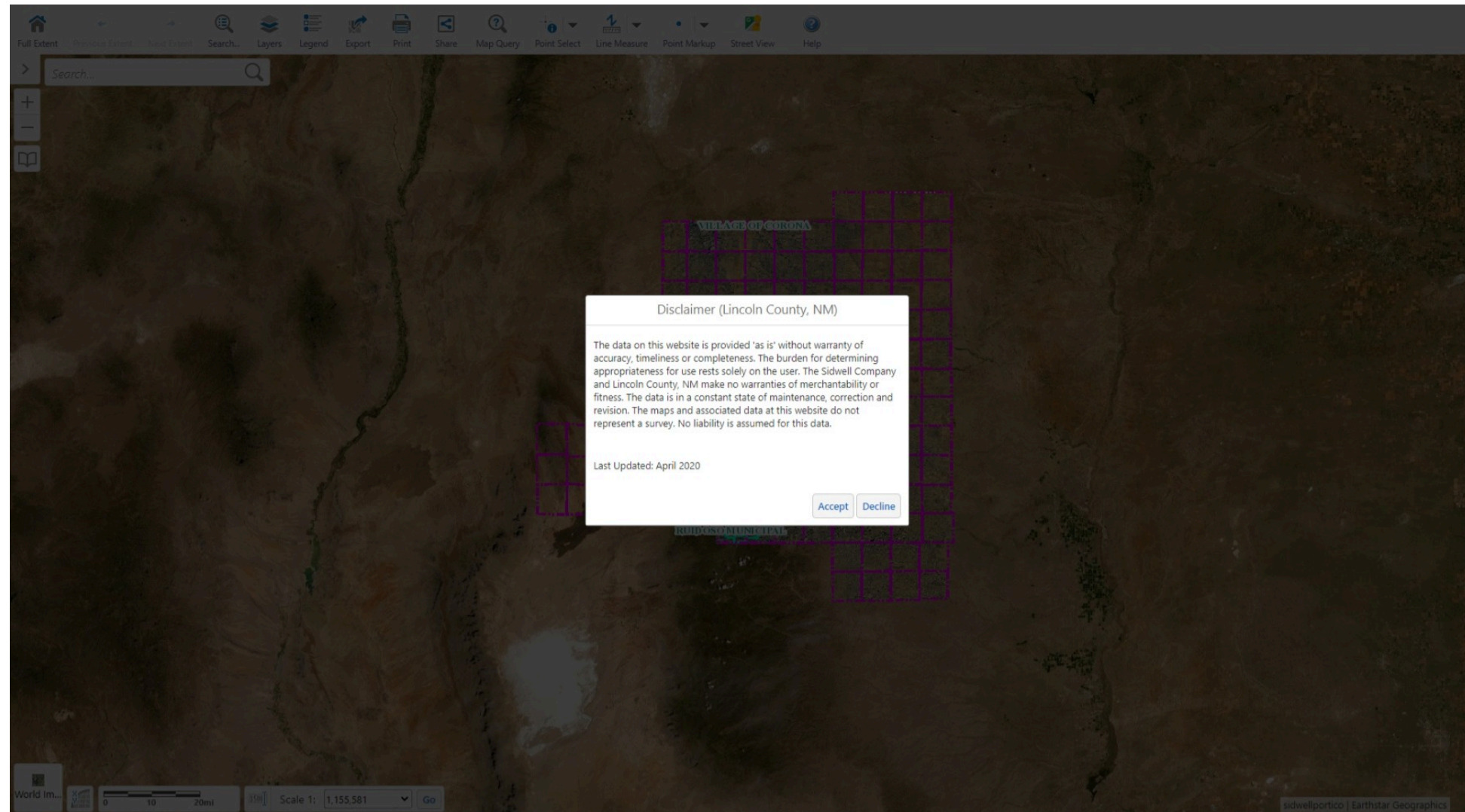


EXHIBIT 5

STATE OF NEW MEXICO
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AQB 21-57(P)

STATE OF NEW MEXICO)
) ss.
COUNTY OF SANTA FE)

AFFIDAVIT OF LILIANA DALLETT

Liliana Dallett deposes and states as follows:

1. I am over the age of 18 years and am otherwise competent to make this affidavit.

The matters set forth below are true based on my personal knowledge and information.

2. I am a legal assistant at Hinkle Shanor, LLP, counsel for The Ranches of Sonterra Homeowners Association.

3. On November 30, 2021 I contacted EagleView Technologies, Inc. ("EagleView"), the maker of the pictometry software CONNECTExplorer.

4. In Roper Construction, Inc.'s application to the NMED Air Quality Board for an air quality permit, Roper submitted an image of a CONNECTExplorer map showing the parcels within a .50-mile radius of the proposed site of the Alto Concrete Batch Plant. *See* Exhibit A (Roper's universal Air Quality Permit, Section 9, p.21). This map also included the names of the owners in that .50-mile radius. My purpose for contacting EagleView was to ascertain the accuracy of their product's, CONNECTExplorer, parcel map function to verify the accuracy of the map in Roper's application.


5. Upon calling EagleView, I was connected with a member of CONNECTExplorer's Sales Team, who identified himself as Josh.

EXHIBIT 6

6. Josh informed me that CONNECTExplorer's parcel map function utilizes data provided by the United States Geological Survey. He advised me that this data is not updated regularly and may be as outdated as five years.

7. Additionally, Josh advised me that CONNECTExplorer's intended use is not for gathering the most accurate owner names and addresses in a particular radius.

FURTHER AFFIANT SAYETH NAUGHT.

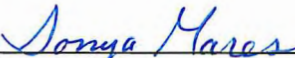


Liliana Dallett

12-06-2021

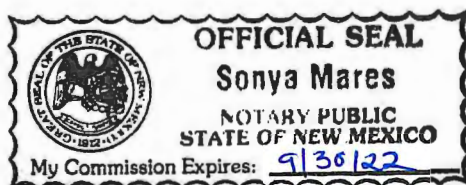
Date

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me on this 06 day of December, 2021, by Liliana Dallett.



Notary Public

My Commission Expires:



STATE OF NEW MEXICO
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) ss.
COUNTY OF LINCOLN)

AFFIDAVIT OF MARK SEVERANCE

Mark Severance, being first duly sworn, deposes and states as follows:

1. I am over the age of 18 years and am competent to make this affidavit. The matters set forth below are true based on my personal knowledge.
2. I am a resident of Alto, New Mexico and drive past the proposed location of Roper Construction, Inc.'s ("Roper") concrete batch plant on NM 220 daily.
3. On November 23, 2021, I visited the location of the proposed batch plant and took a photograph, attached as Exhibit A to this affidavit, which shows the public notice posted by Roper at the site.
4. The public notice cannot be read from the highway, either while traveling in a car or while stationary.
5. The notice does not provide a passerby with any indication that a concrete batch plant is proposed to be constructed at the site without approaching within a foot or two of the notice.
6. The notice appears to be printed in 12-point Times New Roman font.
7. The notice is not posted at any discernable entrance to the property.


EXHIBIT 7

8. In order to read the notice, a passerby must pull over onto the shoulder of NM 220, where the speed limit is 50 MPH, exit their vehicle, and walk approximately 40 feet to the location of the notice which is affixed to a fence post on Roper's property.

9. Based on Roper's access permit issued by the New Mexico Department of Transportation, the location of the proposed entrance to the property is 244 feet east of the property line of Roper's property and the adjoining tract (3A) to the west. See Exhibit B (map of proposed facility, p. 11 of access permit).

10. On November 23, 2021, I measured the distance from the posted notice to the property line and found that the notice is posted approximately 49 feet east of the center line of the proposed entrance, in addition to being approximately 40 feet back from the highway shoulder.

FURTHER AFFIANT SAYETH NAUGHT.


MARK SEVERANCE

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me on this 3rd day of December, 2021, by Mark Severance.


Notary Public

My Commission Expires:

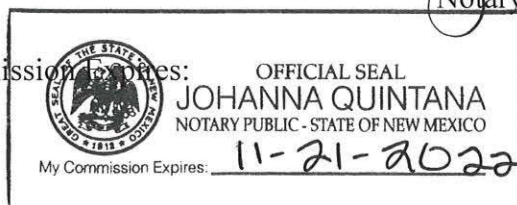




EXHIBIT A



SEPTEMBER 3, 2021

ROPER INVESTMENTS LLC
PO BOX 969
ALTO, NM 88312

RE: Access Permit No. **2 - 5533** **NM 220** **MM .35** **N ROW**

Attached is an **Executed** copy of the above access permit. You may now begin construction.

ALL CONSTRUCTION AND MAINTENANCE COSTS of this access will be the applicant's responsibility.

Removal of any debris (mud, dirt, rock, etc.,) tracked onto the highway during construction or the use of the access/median, **shall** be the responsibility of the applicant.

During construction of this access, the contractor must place warning signs in accordance with requirements of the latest edition (2009) of the Manual on Uniform Traffic Control Devices (MUTCD). This MUTCD manual can be found at mutcd.fhwa.dot.gov

A copy of this permit and attached documents **shall** be on site during construction and *should be* retained for record keeping purposes.

The completed construction of this installation must meet the provisions and specifications of the permit and is subject to the approval of this office. If not completed according to plans and specifications, corrections deemed necessary will be at the expense of the applicant.

Access permit shall remain in compliance with New Mexico Administrative Code (NMAC) 18.31.6 State Highway Access Management requirements, terms and conditions.

Notify: (3) days prior to installation:

Capitan Patrol Supervisor Ernie Trujillo: Office: (575) 840-8681
Cell: (575) 808-0047

If you have any questions, please contact District 2 Permit agent at (575) 840-9301 or by email Dtwo.Permits@state.nm.us

Sincerely,

A handwritten signature in red ink, appearing to read "Rudy Chavez".

RUDY CHAVEZ
DISTRICT TWO PERMIT AGENT

Michelle Lujan
Grisham
Governor

Michael R. Sandoval
Cabinet Secretary

Commissioners

Jennifer Sandoval
Commissioner, Vice-Chairman
District 1

Bruce Ellis
Commissioner
District 2

Keith Mortensen
Commissioner
District 3

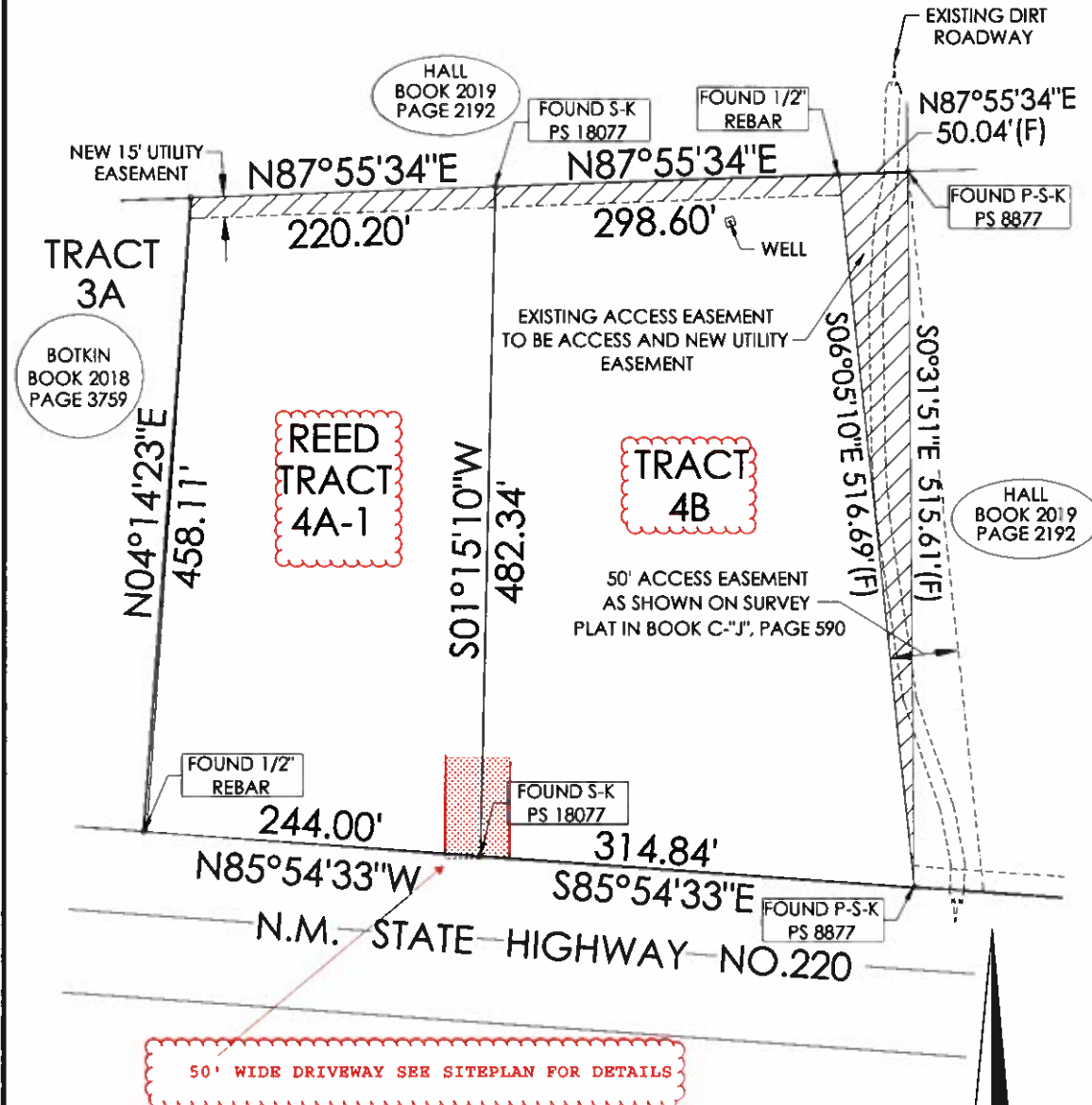
Walter G. Adams
Commissioner, Chairman
District 4

Vacant
Commissioner
District 5

Charles Lundstrom
Commissioner, Secretary
District 6

EXHIBIT B

EXHIBIT "A"



NOTES:

- 1) BEARINGS AND DISTANCES SHOWN ARE FROM PLAT OF RECORD UNLESS NOTED (F) FOR FIELD DISTANCE AND BEARING.
- 2) PLAT OF RECORD FOR REED TRACT 4A-1 IS RECORDED IN BOOK CAB-"K", PAGE NO.266 RECORDS OF LINCOLN COUNTY.
- 3) PLAT OF RECORD FOR TRACT 4B IS RECORDED IN BOOK CAB-"J", PAGE NO.1062 RECORDS OF LINCOLN COUNTY.
- 4) S-K= ALUMINUM SURVEY KAP P-S-K= PLASTIC SURVEY KAP

